



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended	<b>04/01/02</b>	Bill No:	<b>SB 1608</b>
Tax:	<b>Motor Vehicle Fuel Diesel Fuel</b>	Author:	<b>Morrow</b>
Board Position:	<b>Neutral</b>	Related Bills:	<b>AB 345 (Matthews)</b>

### BILL SUMMARY

This bill would provide a refund for excise taxes paid on motor vehicle fuel (gasoline) and diesel fuel delivered into the fuel tank of a motor vehicle for use by a local emergency service provider.

### ANALYSIS

#### Current Law

Under existing law, an excise tax of \$0.18 per gallon is imposed on each gallon of gasoline and diesel fuel, unless specifically exempted.

Generally, local governments are required to pay the state excise tax on gasoline and diesel fuel to the same extent as any other person in this state.

The excise tax on gasoline is paid to the Controller and deposited into the Motor Vehicle Fuel Fund. The diesel fuel tax is paid to the State Board of Equalization (Board) and deposited into the Transportation Tax Fund.

#### Proposed Law

This bill would allow any person who buys and uses gasoline or diesel fuel in any gasoline or diesel-powered highway vehicle owned and operated by a local emergency service provider to be refunded the amount of excise tax paid for such fuel.

This bill also provides that the motor vehicle fuel backup tax would not apply to fuel on which a claim for refund has been allowed when such fuel is used in a gasoline-powered highway vehicle that is owned and operated by a local emergency service provider. Likewise, the backup tax would not apply to delivery of diesel fuel into the fuel tank of a diesel-powered highway vehicle for use in a diesel-powered highway vehicle that is owned and operated by a local emergency service provider.

A local emergency service provider would be defined to mean either of the following:

- A fire department maintained by a city or town, a fire company in an unincorporated town organized pursuant to Section 14825 of the Health and Safety Code, or a fire protection district formed pursuant to the Fire Protection District Law of 1987.

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- A police department or a sheriff department maintained by a city, county, or city and county.

In addition, this bill would allow a local emergency service provider to operate a motor vehicle on any public highway in this state with dyed diesel fuel in the fuel supply tank.

As a tax levy, the bill would become effective immediately upon enactment.

## Background

In 1994, Senate Bill 840 (Chapter 912, Presley) enacted the Diesel Fuel Tax Law and moved the collection point of the excise tax on diesel fuel from the wholesaler level to the terminal rack level for purposes of conforming the state imposition of the tax to federal law.

During the 1995 Legislative Session, Senate Bill 1131 (Chapter 34, Costa) made a number of changes to the Diesel Fuel Tax Law. Among other things, SB 1131 defined state and local governments, required those agencies to obtain a fuel tax license, file a tax return, and pay their state excise tax liability. In addition, that bill allowed those agencies to use dyed diesel fuel on the highway, but required the payment of the excise tax on such fuel.

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to help local emergency service providers pay for increased operating costs resulting from the events of September 11<sup>th</sup>.
2. **Summary of the April 1, 2002 amendments.** A definition for local emergency service provider was added and language relating to exemption certificates for motor vehicle fuel was removed since this measure provides for a refund of fuel taxes paid and not an exemption. In addition, technical amendments suggested by the Board in its previous analysis were added to the bill.
3. **Precedent for exemptions for other public services.** It could be argued that the provisions proposed by this bill, which is narrowly targeted to specified uses of gasoline and diesel fuel by local emergency service providers, is warranted because of the high priority of those services. However, there may be many other worthy services provided at the state level or by private companies that may have equally persuasive arguments, such as ambulance companies, the California Highway Patrol, or the State Department of Forestry.
4. **This measure would not apply to aircraft and vessels used by local emergency service providers.**
  - This bill would allow any person who buys and uses gasoline in any *gasoline-powered highway vehicle* owned and operated by a local emergency service provider to be refunded the amount of paid for such fuel. The Motor Vehicle Fuel Tax Law defines a gasoline-powered highway vehicle to mean a motor vehicle that is operated by a motor vehicle fuel-powered engine on a highway.

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Accordingly, persons who have paid tax on gasoline delivered into the fuel tank of an aircraft or vessel for use by a local emergency service provider would not qualify for a refund of the tax since aircraft and vessels do not qualify as gasoline-powered highway vehicles.

- Sections 8101.5 and 8101.7 provide that no refund of any tax shall be granted on gasoline used in propelling an aircraft or vessel in this state.

With respect to aircraft (including helicopters), there are two types of fuels used. The first, aviation gasoline, is generally used in propeller type aircraft. The second type of fuel, aircraft jet fuel, is used in jet or turbine type aircraft. Generally, the types of aircraft used by police and fire departments consist of smaller aircraft powered by aviation gasoline rather than aircraft jet fuel.

Both gasoline and diesel fuel are used in vessels. Current diesel fuel tax law allows for the refund of the amount of tax included in the price paid on diesel fuel used for purposes other than operating motor vehicles upon public highways in this state.

5. **The Controller is responsible for refunds of the motor vehicle fuel tax.** Under the Motor Vehicle Fuel Tax Law, a claim for refund of the motor vehicle fuel tax must be filed with the Controller. Generally, the Controller will refund the tax upon the presentation of a properly completed claim and the invoice for the fuel. Credit interest, however, is not allowed on user refunds processed by the State Controller.

With respect to diesel fuel tax, claims for refund are filed with the Board. The Board will refund the tax, including interest, upon the presentation of the claim and the invoice for the fuel.

6. **The backup tax.** Both the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law contain a backup tax. In general, the backup tax is a "catch-all" tax intended to impose the tax on fuel purchased ex-tax, or on fuel on which a claim for refund has been allowed, when such fuel has been used in a motor vehicle operated on the highway.

This bill provides that the backup tax would not apply to gasoline and diesel fuel used in a gasoline or diesel-powered motor vehicle on which a claim for refund has been allowed. Without this exemption, local emergency service providers would still be required to pay the tax under the backup provisions if the fuel upon which a refund has been allowed was used in a motor vehicle operated on the highway.

7. **Suggested technical amendments.** The April 1, 2002 version of this measure was amended to add a definition for "local emergency service provider" to Sections 7401, 8101, and 60100. Although the term "local emergency service provider" is referenced in Sections 60101, 60108, and 60501, a definition was not incorporated into those sections. For purposes of consistency with existing law and to prevent any confusion, the term "local emergency service provider" should be defined only once in the Motor Vehicle Fuel Tax Law and in the Diesel Fuel Tax Law. As such, it is recommended that the bill be amended to add Sections 7346 and 60049.5 to the Revenue and Taxation Code incorporating the definition of local emergency service provider. The definition of local emergency service provider should be removed from Sections 7401, 8101, and 60100.

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In addition, on page 10, line 35, the word "or" should be replaced with "and."

8. **Related legislation.** Assembly Bill 345 (Matthews), which was introduced in 2001, would have exempted from the excise tax diesel fuel sold by a supplier to a public safety department, as defined, for use in an authorized emergency vehicle. That bill died in the Assembly Appropriations Committee. The Board voted to support that measure.

## **COST ESTIMATE**

The administrative workload associated with this bill would include advising and answering inquiries from the public, informing Board staff, revising forms and processing additional claims for refund. A cost estimate of this workload is pending.

## **REVENUE ESTIMATE**

### **Background, Methodology, and Assumptions**

Analyzing fuel expenditure figures of the police and fire departments of Los Angeles and San Diego, two of the largest city departments in the state, it is seen that fuel expenditures, in relation to overall department expenditures is not very significant statistically (less than 1%).

The State Controller's Cities Annual Report, for the fiscal year ended June 30, 1999, indicated the following as public safety expenditures: Police \$5,513,634,000, Fire \$2,109,204,000. Based on the Los Angeles and San Diego ratios, the following is estimated:

Estimated Gasoline Fuel Expenditure Incurred by Police Departments:      \$37.0 million

Estimated Diesel Fuel Expenditure Incurred by Fire Departments:      \$11.0 million

The average gasoline price in 2001 was \$1.664 per gallon. Based on this average, it is estimated that police vehicles consumed 22.2 million gallons ( $\$37 \text{ million} / \$1.664 = 22.2 \text{ million gallons}$ ). An exemption from the Motor Vehicle Fuel Tax would amount to an estimated loss of around \$4.0 million ( $\$0.18 \times 22.2 \text{ million gallons} = \$3,960,000$ ).

The average diesel price in 2001 was \$1.542 per gallon. Based on this average, it is estimated that fire vehicles consumed 7.1 million gallons ( $\$11 \text{ million} / \$1.542 = 7,133,592 \text{ million gallons}$ ). An exemption from the Diesel Fuel Tax would amount to an estimated loss of \$1.3 million ( $\$0.18 \times 7.1 \text{ million gallons} = \$1,260,000$ ).

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**Revenue Summary**

The revenue loss from exempting fire and police department vehicles from the Motor Vehicle Fuel and Diesel Fuel Tax is estimated to be \$5.3 million.

	<u>Revenue Loss</u>
Motor vehicle fuel tax loss:	\$4.0 million
Diesel fuel tax loss:	\$1.3 million
Total Loss:	\$5.3 million

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